SECOND CONSIDERATIONS Concerning the HIGH COURT of CHANCERY,

And the Most Excellent

ORDINANCE

For the REGULATION and LIMITATION

OF THAT

COURT.

BY *EDW. LEIGH* GENT.

Salus Populi Suprema Lex.

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SECOND CONSIDERATIONS Concerning the Regulation of the High Court of CHANCERY.

BEing, during the ſitting of the late Parliament aſſured of a ſtrong endeavour to have the late Ordinance of his Highneſs and his Councel for Regulation and Limitation of the Chancery repealed, or with ſilence to fall to the ground, to the great prejudice of the Commonwealth, I took the boldneſs (though againſt my judgment, as to publication of any of mine own obſervations or conceptions) to cauſe a ſmall Pamphlet to be imprinted to give notice to the Commonwealth of the prejudice it was like to ſuffer by the repeal or expiration of that Ordinance, with deſire that all good People of this Common-wealth would addreſs themſelves to the late Parliament to take the Ordinance and Regulation of the Chancery into conſideration, and before the ending thereof, to take ſome courſe for the Regulation of that Court; That Matters there might not return to the former Incertainties, Delayes, Abſurdities and Expences; which was aimed at by thoſe perſons (who ought out of Conſcience and Duty to the Common-wealth to have been more juſt and kind thereto) that nevertheleſs have occaſioned that evil and miſchief ſince befallen the Common-wealth by obtaining an Act for the Ordinance to continue no longer then until the ending of the late Parliament.

But that miſchief that I then foreſaw, being by the ſudden diſſolution of the late Parliament happened, I have now again

ventured to revive my former Obſervations, profeſſing that as in all my actions hitherto I have had no unjuſt aimes or ends to the diſadvantage or detriment of any; ſo my undertaking at this preſent is onely for the honour of his Highneſs and his Council, and the good and welfare of the Common wealth, which all conſciencious men in my judgment ought to promote.

I have very many years been a Suitor and a ſufferer in that Court, and thereby ſome experience is beaten into me; that I am able to obſerve a great deal of difference between the chargeableneſs, tediouſneſs and other inconveniences formerly there, and the great benefit and eaſe the People have enjoyed by the Ordinance: and if in relation to it I ſay *bonum eſt eſſe hic*, I am confident I ſhall have the concurrent deſires and ſuffrage of every judicious honeſt perſon in the whole Nation.

For indeed, amongſt the many things that Time and Corruption had made the object of Reformation in this Nation, nothing had more need of a Regulation and Reforming, then the High Court of Chancery; which was formerly, and eſpecially of later times, ſo chargeable to Suitors in the proſecution and defence of their Cauſes; And ſo corrupt and uncertain in the practiſe thereof, That inſtead of a Sanctuary to the Oppreſſed, it was become a moſt intolerable burthen to the Nation; And (notwithſtanding all addreſſes to the long Parliament) ſo continued, until the Parliament which began in the year 1653. (which was compoſed of perſons, though perhaps not very learned States-men, yet doubtleſs men of very good and honeſt intention, and very ſenſible of the Burthen of the Nation, by whom it was Voted to be taken away:) But that Parliament diſſolving it pleaſed his Highneſs to continue that Court, it being indeed of very excellent uſe for the Nation, and without which it cannot ſubſiſt as the Common Law now ſtands;

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And both it and the Common Law being challenged by the People as their indubitate Birth-right.

Yet notwithstanding his Highness was pleased to appoint divers of the long Robe to consider of a way for the Regulation and Reformation of that Court: But they, (for what reason I know not) did not effect that good work, so much longed for, and needed by the People of this Land.

Whereupon his Highness by advice of his most Honorable Councill (notwithstanding the other great and important business for the Government and Safety of the Nation laid on them) did make an Ordinance for the Regulation and Limitation of that Court, a better, or more accurate and excellent this Land and Nation never saw, which after much strugling, almost a year after the making thereof, was put in execution; Whereat (as no good man could take exception, so) none but those concerned in point of a Corrupt interest, could, or did speak against: And it may be well observed, that since the same was put in execution, no complaints have been heard against it from the People, for whose good and ease chiefly the same was made.

Yet nevertheless since the beginning of the late Parliament, some unnecessary, burthensome Officers, which either had part of their former unconscionable gain taken from them, or else their Office set aside as unnecessary, have been indefatigable in their endeavours, to get that most excellent Ordinance expelled.

And a Committee of Parliament being appointed for the view of the Ordinance made by his Highness in the interval of Parliaments, that Ordinance was most especially struck at, through the clamours of those late unnecessary Officers of that Court, who aimed not at the good of their Countrey, but their own unconscionable gain.

Nevertheless it pleased the Parliament to refer the matter to another Committee to amend that Regulation, set-

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led by the Ordinance (if they ſaw cauſe) and to ſend for Parties, Papers, *&c.* Which Committee accordingly meeting, the Attorneys by command, and the late Six Clerks attended them; where the Counſel for the Six Clerks was heard in a moſt tedious and impertinent diſcourſe: And the Attorneyes receiving then a command from that Committee, to prepare their reaſons in writing; And to ſet forth wherein the Ordinance was good or bad for the People, and a very ſhort time given them to that purpoſe, they (as I have heard) accordingly prepared their Reaſons, and attended to have preſented them to the Committee.

But the Committee not afterwards meeting, the Attorneys Reaſons could not be preſented to them; and the Ordinance being ſince by Act of Parliament onely to continue during the ſitting of the Parliament; The Parliament being diſſolved, the late Six Clerks without Right or Authority have re-aſſumed the places by them formerly held, though the Office of a Six Clerk is utterly aboliſhed by the Ordinance of Regulation, and the Act of Parliament for confirmation thereof, although indeed the Ordinance be unhappily expired through the art and induſtry of thoſe whom the Common-wealth hath no reaſon to thank for their pains.

And thoſe unneceſſary Officers do again contrary to the Order of the Right Honourable the Lords Commiſſioners of the Great Seal of *England*, made after two ſolemn debates by learned Counſel on both ſides, exact the unconſcionable exorbitant Fees by them formerly taken, and endeavour to introduce the former corrupt and dilatory way of practice and proceedings in that Court, to the great prejudice of the Common-wealth.

It therefore concerneth all honeſt-minded People of this Nation, That they make their Humble addreſſes to his Highneſs and his moſt Honourable Councel; That they take

take the Ordinance into consideration; And that what shall appear to be good therein may be confirmed; And what shall be found therein to be short for the intended welfare of the Nation, may be supplied; And what appeareth to them to be any way discommodious to the People (if any such thing there be) may be amended; that so, so good a Constitution may not fall to the ground unregarded, which hath with so much deliberation and resolution, been appointed for the good and ease of the people.

And to the end the people may be the better informed of the advantage they have, and shall receive by that Ordinance, It were to be wished that those Reasons that the Attorneys or Clerks of the Chancery had provided to be presented to the Committee of Parliament, were made publick: But as there is just cause to fear that in them the Arrow was not drawn to the head (in their composing, there being a great opposition, as I have been informed, even amongst themselves) So without doubt they are now suppressed through the influence and awe the before-mentioned unnecessary Officers have over the abject and private spirits of the present Attorneys.

The Ordinance in the first place provides a convenient number of Attorneys, who are to solicite and manage the Clients cause for 3 s--4 d. a Term, which Fee was formerly received by the Six Clerks, for doing nothing at all for the benefit of the Client, who was forced either to imploy a Solicitor to manage his business, to his great loss, or else to manage it himself: whereby his cause oftentimes miscarried through (either his own or his Solicitors) ignorance.

For the other matters formerly done by the Six Clerks, it is by the Ordinance provided to be done by three Chief Clerks, who have Fees amounting to 500 *l.* a year apiece, which is a competent allowance for their labour, they being to file the Pleadings and Records, to have an inspection upon

on the Attorneys, to make Certificates of matters referred to them by the Court, touching the Regularity of proceedings to set down Causes for hearing, and Tax-costs; all which was better done by them, than ever it was done by the Six Clerks: saving that the chief Clerks, who were three of the late Six Clerks, did not in some things pursue the Ordinance according to their duty.

Now this and the abatement of Fees, are the things that were struck at by the late Six Clerks, and other useless Officers, whose pretence is, That their places, and the Old Fees are their Free-hold, and therefore ought not to be taken from them; That they purchased their places, and that they are of great Antiquity.

As to their Freehold, I wonder whose Freehold their places had been, if the Little Parliament had passed an Act for taking away the Court, as the former Parliament did for taking away the Star-Chamber, and High-Commission Court; and this Parliament the Court of Wards: in which divers as useful Officers as they, without reparation lost their places, as much their Free-hold as the Six Clerks, and also purchased at as dear rates. But the Six Clerks may see their own unjust practice justly retaliated on them, that used at their pleasures, without cause, to turn out the Clerks bred up there into the wide world, to starve, if they had nothing else to live upon.

Besides, they cannot chuse but know there is a Law still in force against buying of Offices; which Law (if they bought their places) they have transgressed, and thereby *ipso facto* forfeited them: but they may please to remember that those places were conferred on Four of the Six by the late long Parliament for a temporary supply in regard of their alledged losses, the same being sequestrated or taken away for delinquency from the former Six Clerks, two whereof are still alive, and have more reason to complain then those

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who by the profits of the places, and the labours of other men have not onely been repaid what ever they loſt, but have exceedingly enriched themſelves.

And for their Antiquity, it is very apparent that the number of Clerks or Attorneys of that Court was in old times uncertain, ſometimes more, ſometimes leſs, as the buſineſs of the Court required: for in *Edward* the Firſt s time they were Six; afterwards they were reduced to Three: and in *Richard* the Second's time they were increaſed to Six again, in which number they found the means to continue; and at firſt did the buſineſs of the Court and Client, and officiated as Regiſters and Examiners, and ſometimes made Motions in Court; but for above an hundred years paſt have ceaſed to act as Attorneys, and onely acted as Prothonotaries in other Courts, being an oppreſſion both to the People and over their Clerks, who have ever ſince performed the Office of Attorneys, and done the buſineſs of the Court, and Clients who retained, imployed, and truſted them, and not the Six Clerks. And the buſineſs of the Court being now ſo much increaſed that Six Clerks cannot poſſibly do it, it is hoped that is no more injuſtice to increaſe the number of Attorneys now, than it was in times paſt. And certainly the Office of an Attorney being not executable by a Deputy, the Six Clerks can no more claim to be Attorneys, than the Prothonotaries of other Courts.

And I hope the Six Clerks will be ſo ingenuous as to confeſs, that beſides the impoſſibility for them to ſollicite the Clients Cauſes, not one or all of them togethe are able to do any thing belonging to an Attorney or Clerk to do, *viz.* To draw all ſpecial Writs, Commiſſions, Decrees, Diſmiſſions, and to make and write all other Writs, and Copy Records. This being true, why ſhould they be paid for what they neither do, or know how to do; or monopolize the place of an Attorney which they cannot execute?

Thus I hope it is apparent their removal is no injuſtice, and that the increaſe of the number of Attorneys is a benefit to the Common-wealth; and there is no doubt but if the Ordinance, as to the Officers, Clerks, and Attorneys of the Court, were put more ſtrictly and duly in execution, it would be of admirable benefit to all Suitors, and thoſe that are ſued in that Court; for the tediouſneſs of Suits is by the Ordinance very well provided againſt, as alſo divers Writs, as *Subpœna's* to make a better anſwer, and to rejoyn, are taken away; as likewiſe whereas before, when Witneſſes were examined in Court, or by Commiſſion *ex parte* it was ordinarily two or three Termes before publication could paſſe, now it is provided in the Ordinance to paſs in a Week. Not to ſpeak of the Plaintiffs giving ſecurity, becauſe I think little uſe was made of it, and it was a great trouble and charge to the Party: But yet there is an Act of Parliament for it in *Henry* the Sixths time, and ſo it was but an old Law newly revived, and that and the filing of Bills before the awarding of the *Subpœna's* according to the Prayer of the Bill, was a means to hinder men from bringing frivolous and vexatious ſuits; a thing too often practiſed in that Court.

And the taking of Anſwers in the Country by Maſters extraordinary is of great uſe to the People, the ſame being formerly done by a Commiſſion wherein the Tenor of the Bill was included, for which the Client paid Six-pence a ſheet, though the ſame were of no uſe at all, there being a Copy of the Bill taken, by which the Defendants anſwer was alwayes drawn, before the Commiſſion was opened: but if the Commiſſion were amended, and the Clauſe of including the Tenor of the Bill, omitted, I believe it would be a greater eaſe to the People, who were often enforced to travel many miles to a Maſter extraordinary, to ſwear to their anſwers; & would alſo ſave ſome charges and expences.

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Likewiſe the making of all Writs open cannot but be a great ſatisfaction to the People, they being thereby enabled to ſee whether the Writ have any miſtake in it or not, whereas while they were cloſe, the Client was often put to a deal of fruitleſs charge, eſpecially in the Commiſſions, to examine Witneſſes, as I my ſelf have found by experience; and likewiſe it is left by the Ordinance at the Clients liberty to execute a Commiſſion in any place, which without doubt is, and may be of good conſequence for the amicable ending of ſuits, eſpecially if the Commiſſioners be men of judgment and integrity.

And there are ſome abuſes which may be committed in the Examiners Office, which is impoſſible to be diſcovered when it is done: for a man may be examined in his own cauſe, and may procure his own witneſſes to be croſs examined on the other ſide, and ſo prevent any exceptions to their perſons or teſtimony, of both which there hath been of late complaints; which enormity is impoſſible to be committed at the execution of Commiſſions.

Alſo the frequent renewing of Commiſſions, tending onely to delay, is well provided againſt by the Ordinance, and the Defendants having a Duplicate, is of advantage to him, eſpecially in caſes where his witneſs are ancient and ſickly.

Likewiſe the granting of Injunctions meerly upon the courſe of the Court, *viz.* upon the Defendants taking a Commiſſion to anſwer ſitting in contempt, or making an inſufficient anſwer, was heretofore a great grievance to the Nation, but very well provided againſt by the Ordinance, to be granted onely upon ſound and ſatisfactory grounds.

And alſo whereas heretofore a Defendant could hardly put in any anſwer but the Plaintiff would put in exceptions to it, which were referred to a Maſter, who uſually favoured the Plaintiff, and ſo the Client was put to a double charge;

Now by the Ordinance it is provided that only the Master of the Rolls shall hear them: and the most honourable and judicious Gentleman the present Master of the Rolls hath so impartially heard those matters, that it is believed the putters in of frivolous exceptions have little encouragement thereto for the future, wch is also a great ease to the People.

Likewise the making of Orders upon whispering Petitions is provided against, and Orders to be made onely upon Motion in Court; and therein also the Right Honorable the Lords Commissioners of the Great Seal are much to be honored for their Order of Notice upon Motions.

And the Provisions in the Ordinance concerning Mortgages, are very just and impartial, and the Mortgager hath thereby a convenient time for redemption of his Land, and the other a sure way for recovery of his just debt, which formerly he received by minute parcels, whereas his Mortgage money was lent in grosse, and the Mortgager often enforced to an accompt after twenty years possession, to his great and intolerable damage.

Also the provision for References to be determined by three of the Six Masters of the Chancery in Ordinary together, is most excellent: the benefit to the people by it is very apparent, and I my self cannot but recompt it as beneficial in my particular Cases, with gratitude for the justice by them done. And I shall not much insist on this particular, because the grievances formerly were crying, and universally known and felt, and the parties that did the wrong are deceased, and therefore I wish their doings may be buried with them; and I have so much Charity as to hope they did according to their judgments: and it shall be my prayer that the Ordinance may be punctually observed, and neither Masters nor their Register, for any respects whatsoever, recede from their directions in and by the Ordinance,

dinance; and then it must be a new generation that will complain against them (I have good reason to hope this will not) if they have done, and shall persevere to do according to the Ordinance.

It is also provided by the Ordinance, that the Registers places shall not be executed by Deputies, which I hope no man will speak against; for what reason is there that another person should have a tribute out of the labour of men who spend a great part of their age in attaining to ability in their Profession, and then take a great deal of pains to do the Clients business? Why should the poor Client pay Fees to another by whom he receives no benefit? and the allowance yielded to the Labourer there, by the unnecessary ignorant Officer, so mean, that if the Client had not yielded a supply, there was not a sufficient recompence for the care and labour taken by those that were Deputies formerly, but now stand on their own leggs: And sure I am that if the Ordinance as concerning the Registers be duly and conscionably observed, none will find fault but those persons, who without art or conscience would thrust themselves into places they are not able to execute.

The Ordinance also provides well that the chief Examiners do examine all the Witnesses themselves, and not by Deputies, and if they are not able so to do, either through their own incapacity, or the multiplicity of business, if the present Examiners be removed, or others of ability and honesty be added to them, I hope it will not be a grievance worthy of any complaint.

The great cry against the Ordinance under colour whereof the cashiered Officers have thrust in this head of their Serpentine complaints, is, that the Court must not relieve against new Bonds, and that Legacies shall be sued for at Law: I conceive that at the making of the Ordinance a provision

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was intended in those cases for a relief to be had at the Common-Law. But if upon second thoughts the Chancery shall be thought the fittest Court to give relief therein, I wish the Suitors speedy and just relief there.

Likewise the Fees are lessened to half what they were before, or less, which I hope will be confessed to be an ease to the people.

And I much wonder that the Six Clerks and other Officers of the Court should presume to claim a Free-hold in the old unconscionable Fees, for they took them formerly but by prescription, which is by the Ordinance and Act for confirmation of it, not onely interrupted, but a new establishment made, and since that Law is now expired, there is no absolute power in any to demand any Fees; but those who do the Clients business, may properly demand satisfaction for their labour as much as they shall honestly deserve, to be allowed by the Lords Commissioners for the Great Seal, who are the sole Judges of the Court; & the useless Officers who do nothing for the Client have no right to any thing at all.

I shall not grudge at the Fees given to Counsel, and onely pray that those Gentlemen may have pity and compassion on the poor Suitors to the Court, and that they press not an evil cause too far.

I could have wished that some abler Pen might have shewed the usefulness of this Ordinance to the People, being my self, I confess, insufficient to do it: But by this imperfect Discovery, the perfection of that excellent Constitution may in part appear. And the drift of this endeavour being for the information of the People, and for their good and advantage, I hope the imperfections thereof will be pardoned; and that the adversaries of the Peoples welfare will not prevail against this Ordinance, which was by the Supreme Magistrate of this Common-wealth, and his Councel, with so great wisdom and exactness provided for their good.

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And if I am cenſured for that herein I do ſeem to adhere unto the right and intereſt of the Attorneys, I ſhall give this reaſon, that I am ſenſible of the care and pains by them taken in the buſineſs wherewith they are intruſted, and in my judgment the Labourer is worthy of his wages: and as at firſt what was given was but for the ſatisfaction of the party that did the buſineſs; ſo I think ſtill, he that doth my buſineſs, ought to have what in conſcience he merits for it, and not that the Six Clerks, who never in the leaſt aſſiſt me in managing my cauſe, ſhould have the greateſt part of the Fees I pay.

But I ſhall leave the Attorneys to aſſert their own intereſt, who being ſworn into a Calling and Imployment, I conceive cannot be legally deveſted thereof during their lives, unleſs they demean themſelves amiſs, which I hope they will be careful to prevent.

And I much deſire a ſtrict Government in that Court, and a Super-intendency over the Attorneys; for ſurely although the Six Clerks practice was heretofore ſo, and will be ſo again, (if they are admitted into their former places) yet the Attorneys ought not to do as they liſt. And it being the office of the Maſter of the Rolls to be Super-Intendent over the Clerks of the Court, he having now many other affairs, if he appoint one chief Clerk, or Secondary, to do thoſe things appointed by the Ordinance to be done by the three chief Clerks, I think it juſt that ſuch Super-Intendent Officer have a recompence ſuitable to the honour of the place he is employed in: But as to have many Governours is no bleſſing to a Common-wealth, ſo I think one experienced over-ſeeing Clerk will ſuffice to do what is appointed by the Ordinance to be done by the chief Clerks, and a greater number will onely breed confuſion, and be an unneceſſary burthen and charge upon the Suitors.

FINIS.